

SENATE BILL REPORT

ESHB 1008

As Reported By Senate Committee On:
Judiciary, March 30, 2007

Title: An act relating to the protection of vulnerable adults.

Brief Description: Protecting vulnerable adults.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Moeller, Lovick, Kagi, Cody, Appleton, Conway, Morrell, Kenney, Simpson, B. Sullivan, Goodman and Lantz).

Brief History: Passed House: 3/07/07, 97-0.

Committee Activity: Judiciary: 3/16/07, 3/30/07 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Juliana Roe (786-7405)

Background: The Abuse of Vulnerable Adults Act (Act) authorizes the Department of Social and Health Services (DSHS) and law enforcement agencies to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults. The Act also requires mandatory reporting and investigations. It also allows vulnerable adults to seek protection orders or file civil suits for damages resulting from abandonment, abuse, exploitation, or neglect.

A vulnerable adult includes a person who: (1) is 60 years of age or older who has a functional, mental, or physical inability for self-care; (2) has been found to be incapacitated; (3) has a developmental disability; (4) resides in a licensed facility such as a nursing home, adult family home, or residential rehabilitation center; or (5) is receiving hospice or home health services.

A vulnerable adult who is suffering from abandonment, abuse, financial exploitation, or neglect may petition the superior court for an order for protection. The court may order any relief it deems necessary to protect the vulnerable adult for a specified period of time that may not exceed one year. The types of relief the court may order include: (1) restraining the respondent from committing acts of abuse, abandonment, exploitation, or neglect; (2) prohibiting contact by the respondent; (3) prohibiting the respondent from coming within a certain distance of particular locations; (4) requiring the respondent to provide an accounting

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of the disposition of the vulnerable adult's income or resources; and (5) restraining the sale of property for a specified time period.

DSHS is authorized to file a petition for an order for protection on behalf of a vulnerable adult, but only if the vulnerable adult consents. A petition for a protection order or an action for civil damages may also be brought by the vulnerable adult's family members and/or guardian or legal fiduciary "where necessary."

The civil filing fee for an order for protection is \$200. The court may waive the fee in its discretion.

A vulnerable adult who has suffered abandonment, abuse, financial exploitation, or neglect while residing at a facility or while receiving care from a home health, hospice, or home care agency may bring a cause of action for civil damages for his or her injuries, pain and suffering, and property loss. Upon the death of the vulnerable adult, the executor or administrator of the deceased may bring the action for damages for the benefit of the following statutory beneficiaries: spouse and children, or parents and siblings who were dependent on the vulnerable adult for support. If a deceased vulnerable adult has no surviving statutory beneficiaries, the estate does not have standing to bring the action, even for recovery of the economic losses to the estate..

Summary of Engrossed Substitute Bill: A petition for an order for protection for a vulnerable adult may be brought by an interested person on behalf of the vulnerable adult. An "interested person" is defined as a person who is interested in the vulnerable adult's welfare and who has a good faith belief that intervention is necessary to protect the vulnerable adult. An interested person must state in the petition why he or she qualifies as an interested person. DSHS may bring a petition on behalf of the vulnerable adult without the consent of the vulnerable adult if DSHS believes the vulnerable adult lacks the ability or capacity to consent.

When a petition for an order for protection is filed by someone other than the vulnerable adult, notice of the petition and hearing must be personally served on the vulnerable adult and must include a standard notice form developed by the Administrative Office of the Courts (AOC). If good faith attempts at personal service are unsuccessful, the court may authorize service by mail, or by publication if personal service or service by mail cannot be obtained.

A process is created for resolving a petition brought on behalf of the vulnerable adult where the vulnerable adult does not consent to the petition. If the vulnerable adult objects to the petition at the hearing, the court may dismiss the petition or the portions with which the vulnerable adult objects, or the court may take additional testimony or order an additional hearing. The court may enter a protection order against the wishes of a vulnerable adult if the court determines that the vulnerable adult is unable to protect his or her person or estate in connection with the issues raised in the petition due to incapacity, undue influence, or other factors found by the court. If the court determines a vulnerable adult who does not consent to the petition is capable of protecting himself or herself, the court may dismiss the order, modify the order if agreed to by the vulnerable adult, or enter any other orders the court deems necessary.

The remedies that the court may provide in an order for protection may extend for a maximum period of five years. The court may not charge a filing fee to the petitioner for a petition for an order for protection.

A process is created for a competent vulnerable adult or a vulnerable adult's guardian to petition for a modification or termination of a protection order.

The AOC must develop and maintain standard forms.

A deceased vulnerable adult's cause of action for damages resulting from abandonment, abuse, financial exploitation, or neglect while residing at a facility or receiving care from a home health, hospice, or home care agency survives to the deceased vulnerable adult's estate for recovery of the economic losses to the estate if the deceased vulnerable adult has no surviving statutory beneficiaries..

EFFECT OF CHANGES MADE BY RECOMMENDED STRIKING AMENDMENT(S) AS PASSED COMMITTEE (Judiciary): The term "incapacitated person" is defined.

When an "interested person" petitions the court for an order of protection for a vulnerable adult, the court is provided with objective criteria to make its determination. The court can consider whether "the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests."

Clarification is provided as to under what statute, RCW 7.40, temporary orders are obtained.

Notice of the request for temporary relief must be provided to the respondent, and to the vulnerable adult if someone other than the vulnerable adult filed the petition, unless there would be immediate and irreparable injury, loss, or damage to the vulnerable adult before notice could be provided.

The circumstances under which the court can find that a vulnerable adult is unable to protect his or her person or estate, in connection with the issues raised in the petition or order, is narrowed to "incapacity, undue influence, or duress" rather than "incapacity, undue influence, or other factors found by the court."

If the court orders a separate evidentiary hearing on the issue of capacity, undue influence, or duress, the court may enter a temporary order for protection pending the evidentiary hearing. The wording of the underlying bill implies that the court could issue a permanent protection order over the objections of the vulnerable adult pending the evidentiary hearing.

If the court orders a separate evidentiary hearing, but does not enter a temporary order, the evidentiary hearing must be held within 14 days of the hearing on the petition.

The separate evidentiary hearing process does not apply when a vulnerable adult has been found to be *fully* incapacitated under the guardianship law, rather than merely incapacitated.

The court's discretion is removed with regard to entering orders involving a competent person without that person's approval.

The provision that a vulnerable adult who has not been found to be fully incapacitated may apply for an order to modify or vacate the order, is clarified.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is meant to clarify the existing statute. One area of concern has to do with limiting the jurisdiction of a court's discretion to maintain or modify the protection order.

A person can be competent and still be duped or conned, although it might not be as evident to that person as it is to those around him or her.

It is important to have a broad term and definition in "interested person." A guardianship may be excessive or invasive in certain situations, whereas a protection order may be more appropriate.

Vulnerable adults do not always have family or friends to look over their well-being. DSHS is left to protect the vulnerable adults in those situations.

If the investigation into a vulnerable adult's situation is left to law enforcement, it can be months or years before a prosecutor can file charges against the wrong-doer. This bill would allow an order of protection to be put in place to protect those in harm's way much earlier than under current law. This bill also circumvents the need for a lawyer because standardized forms and procedures are put in place.

OTHER: There are aspects of this bill that are overreaching. It states that the court can grant an order of protection based upon "•••any other factors." This is unfettered discretion. The courts should be given more guidance. Furthermore, the vulnerable adults language is too broad.

Persons Testifying: PRO: Representative Moeller, prime sponsor; Loren Freeman, Freeman & Associates; Julie Peterson, Association of Housing and Services for the Aging; Bill Scott, Christian Science Committee on Publication for the State of Washington; Bill Moss, DSHS; Jim David, Clark County Prosecutor's Office.

OTHER: Jeff Crollard, Washington State Bar Association Elder Law Section, Washington State Long-Term Care Ombudsman; David Lord, Washington Protection and Advocacy Systems.